



STATE MINING AND GEOLOGY BOARD

EXECUTIVE OFFICER'S REPORT



ARNOLD
SCHWARZENEGGER
GOVERNOR

For Meeting Date: December 11, 2008

Agenda Item No. 5: Consideration for Approval of a Request for Exemption from the Requirements of the Surface Mining and Reclamation Act (SMARA, Public Resources Code Section 2710 et seq.) Pursuant to Section 2714(f) for the Hester Granite (CA Mine ID #91-37-0020), County of San Diego.

INTRODUCTION: The Surface Mining and Reclamation Act of 1975 (SMARA) allows for a one-time exemption for certain surface mining operations should the State Mining and Geology Board (SMGB) determine the operation to be of an infrequent nature and involve only minor surface disturbances. EnvironMINE, Inc., on behalf of the Hester Granite Company, has submitted a request for an exemption for a one-time surface mining activity in association with the Willow Glen Drive improvement project located in the unincorporated area of Rancho San Diego, County of San Diego. The SMGB has the statutory authority to consider and grant such an exemption under certain conditions.

STATUTORY CONSIDERATIONS: SMARA allows for a one-time exemption pursuant to Public Resources Code Article 1 Section 2714(f), which states:

"Any other surface mining operations that the board, as defined by Section 2001, determines to be of an infrequent nature and which involve only minor surface disturbances."

Before exemptions from the provisions of SMARA are granted, the SMGB, pursuant to the SMGB's Resolution No. 93-6, needs to consider and fully address the following four criteria:

Criteria 1 - Compliance with the California Environmental Quality Act (CEQA):

Pursuant to PRC Section 2712(a), has an environmental review been completed on the activity either separately or as part of a larger project? PRC Section 2712(a) states *"It is the intent of the Legislature to create and maintain an effective and comprehensive surface mining and reclamation policy with regulation of surface mining operations so as to assure that: (a) Adverse environmental effects are prevented or minimized and that mined lands are reclaimed to a usable condition which is readily adaptable for alternative land uses."*

Criteria 2 - Local authority: Pursuant to PRC Sections 2715 and 2770(a), is the activity conducted permitted or otherwise authorized by a local lead agency? PRC Section 2715 states *"No provision of this chapter or any ruling, requirement, or policy of the board is a limitation on any of the following:*



Executive Officer's Report

(a) On the police power of any city or county or on the power of any city or county to declare, prohibit, and abate nuisances.

(b) On the power of the Attorney General, at the request of the board, or upon his own motion, to bring an action in the name of the people of the State of California to enjoin any pollution or nuisance.

(c) On the power of any state agency in the enforcement or administration of any provision of law which it is specifically authorized or required to enforce or administer.

(d) On the right of any person to maintain at any time any appropriate action for relief against any private nuisance as defined in Part 3 (commencing with Section 3479) of Division 4 of the Civil Code or for any other private relief.

(e) On the power of any lead agency to adopt policies, standards, or regulations imposing additional requirements on any person if the requirements do not prevent the person from complying with the provisions of this chapter.

(f) On the power of any city or county to regulate the use of buildings, structures, and land as between industry, business, residents, open space (including agriculture, recreation, the enjoyment of scenic beauty, and the use of natural resources), and other purposes.”

PRC Section 2770(a) states “*Except as provided in this section, no person shall conduct surface mining operations unless a permit is obtained from, a reclamation plan has been submitted to and approved by, and financial assurances for reclamation have been approved by, the lead agency for the operation pursuant to this article.*”

Criteria 3 - End use of the mining or borrow site: Pursuant to PRC Sections 2711(b) and 2712, is the end use or proposed end use of property on which the activity occurs defined? PRC Section 2711(b) states “*The Legislature further finds that the reclamation of mined lands as provided in this chapter will permit the continued mining of minerals and will provide for the protection and subsequent beneficial use of the mined and reclaimed land.*”

PRC Section 2712 states “*It is the intent of the Legislature to create and maintain an effective and comprehensive surface mining and reclamation policy with regulation of surface mining operations so as to assure that:*

(a) Adverse environmental effects are prevented or minimized and that mined lands are reclaimed to a usable condition which is readily adaptable for alternative land uses.

(b) The production and conservation of minerals are encouraged, while giving consideration to values relating to recreation, watershed, wildlife, range and forage, and aesthetic enjoyment.

(c) Residual hazards to the public health and safety are eliminated.”



Criteria 4 - Impacts of the operation on commercial activities: Pursuant to PRC Section 2714(b), have the commercial purposes of the activity been considered?

PRC Section 2714(b) states “*Onsite excavation and onsite earthmoving activities that are an integral and necessary part of a construction project that are undertaken to prepare a site for construction of structures, landscaping, or other land improvements, including the related excavation, grading, compaction, or the creation of fills, road cuts, and embankments, whether or not surplus materials are exported from the site, subject to all of the following conditions:*

(1) *All required permits for the construction, landscaping, or related land improvements have been approved by a public agency in accordance with applicable provisions of state law and locally adopted plans and ordinances, including, but not limited to, Division 13 (commencing with Section 21000).*

(2) *The lead agency’s approval of the construction project included consideration of the onsite excavation and onsite earthmoving activities pursuant to Division 13 (commencing with Section 21000).*

(3) *The approved construction project is consistent with the general plan or zoning of the site.*

(4) *Surplus materials shall not be exported from the site unless and until actual construction work has commenced and shall cease if it is determined that construction activities have terminated, have been indefinitely suspended, or are no longer being actively pursued.”*

For the purposes of this consideration, SMARA defines the terms reclamation and mined lands.

PRC Section 2733 defines reclamation as “*the combined process of land treatment that minimizes water degradation, air pollution, damage to aquatic or wildlife habitat, flooding, erosion, and other adverse effects from surface mining operations, including adverse surface effects incidental to underground mines, so that mined lands are reclaimed to a usable condition which is readily adaptable for alternate land uses and create no danger to public health or safety. The process may extend to affected lands surrounding mined lands, and may require backfilling, grading, resoiling, revegetation, soil compaction, stabilization, or other measures.”*

PRC Section 2729 defines mined lands to include “*the surface, subsurface, and ground water of an area in which surface mining operations will be, are being, or have been conducted, including private ways and roads appurtenant to any such area, land excavations, workings, mining waste, and areas in which structures, facilities, equipment, machines, tools, or other materials or property which result from, or are used in, surface mining operations are located.”*

BACKGROUND: The SMGB received a request from EnviroMINE, Inc. on behalf of the Hester Granite Company for the Willow Glen Drive improvement project located in the unincorporated area of Rancho San Diego, County of San Diego, in correspondence dated June 24, 2008. The existing active surface mining operation, Hester Granite Pit (CA Mine ID #91-37-0020) has been



used for material extraction since the late 1940s. About 73 of the 94-acre site is deemed disturbed.

As stated in the June 24, 2008, correspondence, the “*use of periodic blasting, along with extractive operations by heavy equipment, utilizes a top-down bench system to recover the resources. This activity is known to cause periodic, but relatively minor, ground motion. Although mining activity has not been known to dislodge boulders and rocks in the vicinity outside the quarry, it has been deemed prudent to take measures to minimize possible damage resulting from this unlikely event.*” It is further stated “*the owners feel that it would be prudent to take precautionary efforts to prevent these boulders from falling on to the roadway as a result of any possible ground motion (i.e., earthquakes) or erosion.*” As a result of this concern, REC Consultants, Inc. was employed to design a graded trench to serve as a rock catchment along the northern perimeter of Willow Glen Drive. The location of the trench is outside the existing surface mining footprint for the quarry site. This catchment trench is planned to be 1,350 feet in length, 60 feet in width, and 20 feet in depth. The area impacted is on the order of 3.9 acres. The amount of material to be excavated is on the order of 100,000 cubic yards. Of this total, 30,000 cubic yards is planned to be used for fill; whereas, 70,000 cubic yards is planned for processing and sale at the Hester Granite quarry.

The request for a one-time exemption from SMARA was also supported by the County of San Diego Department of Planning and Land Use (County) as noted in their correspondence dated June 24, 2008. The County’s basis of such support is:

- 1) The activity is of an infrequent nature;
- 2) The need for a barrier along a public road to assure safety; and
- 3) The local ordinance requirement for a discretionary grading permit which is also subject to the California Environmental Quality Act (CEQA).

DISCUSSION:

General Threshold Criteria: Pursuant to PRC Section 2714(d), SMARA does not apply to operations where “*Prospecting for, or the extraction of, minerals for commercial purposes where the removal of overburden or mineral product total less than 1,000 cubic yards in any one location, and the total surface area disturbed is less than one acre.*” Based on the description of the project, one hundred thousand cubic meters of borrow material is planned to be extracted. This quantity is not considered a minor surface disturbance, and is 100 times greater than the 1,000 cubic yards threshold allowed. In addition, the borrow site(s) appears to be on the order of about 3.9 acres, greater than the one acre threshold allowed.

Exemption Criteria: It is recognized, however, that not all surface mining operations are an efficient “fit” under SMARA, and that many projects of limited size, duration, economic and



environmental impact would be prevented, delayed, or rendered uneconomic if the requirements of SMARA were fully applied. To address these special situations, SMARA provides the SMGB with authority under PRC Section 2714(f) to grant exemptions under specific conditions when the proposed activity is of an infrequent nature and involves only minor surface disturbance.

The proposed project 1) exceeds SMARA's minimum thresholds by disturbing more than one acre of land and 1,000 cubic yards of material for commercial purposes, and 2) is not a part of an on-site construction project that may be exempt from SMARA pursuant to the requirements under Section 2714(b); however, one-time exemptions have been granted by the SMGB in the past in instances where such thresholds have been significantly exceeded.

The SMGB must consider four specific criteria for considering granting a one-time exemption:

Finding No. 1: Pursuant to PRC Section 2712(a), has an environmental review been completed on the activity either separately or as part of a larger project? The County has indicated that the grading permit required for this project is subject to environmental review pursuant to CEQA; however, no such documentation demonstrating that the environmental review has been performed and completed has been provided.

Finding No. 2: Pursuant to PRC Sections 2715 and 2770(a), is the activity to be conducted permitted or otherwise authorized by a local lead agency? A draft copy of the proposed grading plan, Grading Permit No. L-15371, is proposed to be submitted to and subsequently approved by the County. It is my understanding that the proposed grading plan has not been formally submitted to the County at the time this Executive Officer's report was prepared.

Finding No. 3: Pursuant to PRC Sections 2711(b) and 2712, is the end use or proposed end use of property on which the activity occurs defined? The end use or proposed end use of property on which the activity occurs is defined, that being, public roadway improvement/construction of a catchment trench.

Finding No. 4: Pursuant to PRC Sections 2714(b), have the commercial purposes of the activity been considered? About 70,000 out of a projected total of 100,000 cubic yards of extracted materials are planned to be transported to the Hester Granite Pit for processing and sale. Since the overall purpose of this activity is to construct a catchment trench for safety purposes, no demonstration that the required materials (fill) are not available in sufficient quantities from existing SMARA-compliant surface mine operations has been made.

Other Considerations:

Reclamation: Under PRC Section 2733, reclamation includes processes that address adverse effects from surface mining operations. Such adverse effects include those caused from the



surface mining operation. Since the request clearly states that the cause for the proposed project is to address potential adverse effects as a result of the surface mining operation, reclamation of the proposed trench catchment area must be addressed as part of the reclamation plan.

Mined Lands: “*Mined lands*” includes the surface, subsurface, and ground water of an area in which surface mining operations will be, are being, or have been conducted, including private ways and roads appurtenant to any such area, land excavations, workings, mining waste, and areas in which structures, facilities, equipment, machines, tools, or other materials or property which result from, or are used in, surface mining operations are located. Since the catchment basin is considered “mined lands,” it should be incorporated into the surface mining operation’s approved reclamation plan via an amendment to such plan.

Outstanding Issues: In considering an exemption, it is reasonable to expect that the existing surface mining operation is in compliance with its respective approved reclamation plan. In review of the approved reclamation plan for the Hester Granite Pit, The Department of Conservation Office of Mine Reclamation (OMR) raised certain issues:

1. Condition A of the Notice of Approval of Reclamation Plan date June 27, 1980, states, “*Within 180 days of granting this reclamation plant: ...the application shall... 4. Submit detailed and complete landscape plans to the Regulatory Planning Division for the approval of the Director of Planning and Land Use. Plans shall include:*
 - (a) *A complete planting plan including the names, sizes and locations of all plant materials, including shrubs and ground cover. Wherever appropriate, native or naturalizing plant materials shall be used which can thrive on natural moisture other than such irrigation is necessary to establish the plantings.*
 - (b) *A complete watering system including the location, size and type of all backflow prevention devices, pressure and nonpressure water lines, ... For areas of native or naturalizing plant material, the landscape plan shall show a method of irrigation adequate to assure establishment and growth of plant material through two growing seasons.*
2. Condition F of the Notice of Approval of Reclamation, states, “*All topsoil shall be salvaged, including the vegetation within and on the topsoil; said mulch shall be spread over the slopes to promote natural vegetation.*” The 2005 annual inspection report submitted by the lead agency indicates that topsoil salvage is “not applicable.” The 2006 annual inspection report indicates topsoil salvage as “ok.” Since topsoil salvage was specifically required in the reclamation plan, the amount salvaged and the location of the topsoil stockpiles should be verified.



3. Condition I of the Notice of Approval of Reclamation, states, “*There shall be no fill, waste dumps, or tailings.*” If the excess 30,000 cubic yards resulting from the proposed rock catchment is to be placed within the reclamation plan footprint, it may be necessary to amend the reclamation plan.
4. A review of an aerial photograph indicates that there is some sort of industrial activity occurring in the eastern portion of the site which is not discussed in the reclamation plan. The photograph also indicates that a portion of the mining operation may be outside the approved footprint.

CONSIDERATIONS BEFORE THE SMGB: The Executive Officer can deny a one-time exemption request if, upon review, the request does not comply with the criteria set forth in PRC Section 2714(d). However, this matter can also be placed before the SMGB should 1) a request be made by one SMGB member; 2) the Executive Officer cannot come to a clear consensus; or 3) if controversy arises surrounding the request.

In cases when a request comes before the SMGB, the SMGB can grant a one-time exemption on a case-by-case basis. Prior to granting such exemptions, the SMGB pursuant to the SMGB’s Resolution No. 93-6, needs to consider and assure that the following criteria have been fully addressed:

- 1) Compliance with the California Environmental Quality Act (CEQA);
- 2) Local authority;
- 3) End use of the mining or borrow site; and
- 4) Impacts of the operation on commercial activities.

EXECUTIVE OFFICER’S RECOMMENDATION: It is the Executive Officer’s conclusion that the one-time exemption request does not meet the requirements of SMARA and the SMGB’s criteria for consideration of such exemptions. The activity is to mitigate adverse effects from surface mining operations. In addition, the applicant has not obtained the necessary permits and has not completed environmental analysis. Based on the analysis and findings set forth above, it is the Executive Officer’s recommendation that the SMGB at this time deny the request for a one-time exemption.



SUGGESTED SMGB MOTION:

To deny the request for a one-time exemption:

Mr. Chairman, in light of the information before the SMGB today, I move that the SMGB find that the project as proposed by EnviroMINE, on behalf of Hester Granite Company, and as described in this report and its attachments, is subject to the requirements of SMARA, and that the SMGB deny a one-time exemption from SMARA for this project under its authority provided by Public Resources Code Section 2714(f).

OR

To approve the request for a one-time exemption:

Mr. Chairman, in light of the information before the SMGB today, I move that the SMGB find that the project as proposed by EnviroMINE, on behalf of Hester Granite Company, and as described in this report and its attachments, is not subject to the requirements of SMARA, and that the SMGB grant a one-time exemption from SMARA for this project under its authority provided by Public Resources Code Section 2714(f).

Respectfully submitted:

Stephen M. Testa
Executive Officer